

Report to:
Licensing & Regulatory (Urgent Referrals)
Committee:

Date of Meeting

28 August 2013

Council:

5 September 2013

Subject: Implementation of the Scrap Metal Dealers Act 2013

Report of: Director of Built Environment

Wards Affected: All

Is this a Key Decision? No

Is it included in the Forward Plan?
No

Exempt/Confidential No

Purpose/Summary

To seek Members' endorsement of the recommendations to Council, as below:

- (a) The giving of delegated powers to Licensing Sub-Committees and to the Director of Built Environment in respect of certain functions under the Scrap Metal Dealers Act 2013; and
- (b) To seek the approval of Members for proposed fees to be charged for the process.

Recommendation(s)

That Council:

- (a) Approves the fees a set out in Section 5 of the report in respect of Scrap Metal Dealers Licence; and
- (b) Authorises the amendment of Chapter 7 of the Constitution – Regulatory and Other Committees (Delegations to Regulatory and Non-Executive Committees) as follows:

Licensing and Regulatory Committee

- (i) To exercise the functions of the Licensing Authority in accordance with the Scrap Metal Dealers Act 2013 ; and
- (ii) To authorise the Licensing and Regulatory Committee to delegate it's functions under (i) above to Licensing Sub Committees (consisting of 3 Members).

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		√	

2	Jobs and Prosperity		√	
3	Environmental Sustainability		√	
4	Health and Well-Being		√	
5	Children and Young People		√	
6	Creating Safe Communities	√		
7	Creating Inclusive Communities		√	
8	Improving the Quality of Council Services and Strengthening Local Democracy	√		

Reasons for the Recommendation:

To allow the implementation of the provisions contained within the Scrap Metal dealers Act 2013.

What will it cost and how will it be financed?

(A) Revenue Costs

The proposed fees will provide cost recovery for the services provided.

(B) Capital Costs

None.

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Legal	The Head of Corporate Legal Services (LD1783/13) has been consulted and any comments have been incorporated into the report.
Finance	The Head of Finance and ICT (FD2478/2013) has been consulted and notes the report indicates there are no direct financial implications. Fees will be set locally by each local authority on a cost recovery basis, but local authorities will have a duty to have regard to guidance issued by the Secretary of State which will outline the issues that should be considered by them when setting the fee and what activities the fee can cover.
Human Resources	None

Equality

1. No Equality Implication

2. Equality Implications identified and mitigated

3. Equality Implication identified and risk remains

Impact on Service Delivery:

These provisions replace existing Scrap Metal and Motor Salvage regulations and as such should not impact on service delivery.

What consultations have taken place on the proposals and when?

None.

Are there any other options available for consideration?

N/A

Implementation Date for the Decision

Following the Meeting.

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Background Papers:

None

1. Background

- 1.1 Members will recall that a previous Report was submitted to them on 3rd June 2013 concerning the provisions contained within the Scrap Metal Dealers Act 2013.
- 1.2 That Report indicated that the Home Office was to issue further regulations and detailed guidance prior to the proposed implementation of the Act, which was to be 1st October 2013.
- 1.2 At the Meeting Members RESOLVED that:
 - (1) The report be noted; and
 - (2) Update reports be provided once further Regulations are issued by the Secretary of State.
- 1.3 The Scrap Metal Dealers Act 2013 (“the Act”) received Royal Assent on 28th February 2013 and we still await further regulations and notes of guidance to be issued by the Home Office.
- 1.4 The Act repeals the Scrap Metal Dealers Act 1964 (and linked legislation) and Part 1 of Vehicles (Crime) Act 2001, creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries. The Act maintains local authorities as the principal regulator but gives them the power to better regulate these industries by allowing them to refuse to grant a licence to ‘unsuitable’ applicants and a power to revoke licences if the dealer becomes ‘unsuitable’.
- 1.5 The Act provides that an application for a licence must be accompanied by a fee. The fee will be set locally by each local authority on a cost recovery basis, but local authorities will have a duty to have regard to guidance issued by the Secretary of State which will outline the issues that should be considered by them when setting the fee and what activities the fee can cover. This fee will be an essential component of the new regime as it will provide local authorities with the funding they need to administer the regime and to ensure compliance.
- 1.6 The Act incorporates the separate regulatory scheme for motor salvage operators under the Vehicles (Crime) Act 2001 into this new regime. This is to replace the current overlapping regimes for the vehicle salvage and scrap metal industries with a single regulatory scheme. The Act also revises the definition of ‘scrap metal

dealer' and 'scrap metal' to ensure they reflect the twenty-first century scrap metal industry.

2. Summary of the provisions of the Act

- 2.1 The Act defines a “scrap metal dealer” as *a person who is for the time being carrying on business as a scrap metal dealer, whether or not authorised by a licence.*
- 2.2 It further states that “scrap metal” includes:
- (a) Any old, waste or discarded metal or metallic material, and
 - (b) Any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life.
- 2.3 Section 1 of the Act requires that a scrap metal dealer obtains a licence in order to carry on business as a scrap metal dealer. It will be an offence to carry on a business as a scrap metal dealer in breach of the requirement to hold a licence. This offence is punishable on summary conviction with a fine not exceeding level 5 on the standard scale.
- 2.4 Section 2 provides further detail in respect of the licence, including that there will be two types of licence, one for a site and the other for a mobile collector (for those carrying on business otherwise than at a site).
- 2.5 A site licence will be issued by the local authority in whose area a scrap metal site is situated and will require all of the sites at which the licensee carries on the business as a scrap metal dealer within the local authority area to be identified and a site manager to be named for each site. In doing so, they will be permitted to operate from those sites as a scrap metal dealer, including transporting scrap metal to and from those sites from any local authority area.
- 2.6 A mobile collector’s licence will authorise the licensee to operate as a mobile collector in the area of the issuing local authority, permitting them to collect any scrap metal as appropriate. This includes commercial as well as domestic scrap metal. The licence does not permit the collector to collect from any other local authority area; a separate licence would need to be obtained from each local authority in whose area the individual wished to collect in. A licence also does not authorise the licensee to carry on a business at a site within any area - should a collector wish to use a fixed site, they would need to obtain a site licence from the relevant local authority. There is no restriction as to the location where the collector can transport and sell their metals.
- 2.7 A licence will be issued for a period of three years from the date of issue. The Secretary of State will have the power under paragraph 1(4) of the Act to alter the duration of the licence.
- 2.8 Section 3 requires that the licensing authority has to be satisfied that an applicant is a suitable person to carry on business as a scrap metal dealer. In considering suitability, the local authority may have regard to any relevant information, including whether any relevant enforcement action has been taken against the

applicant or whether the applicant has been convicted of a relevant offence. The Secretary of State has a power to prescribe in regulations the meaning of relevant offence and relevant enforcement action. It is intended that this will be in line with the criteria used by the Environment Agency when issuing environmental permits under the Environmental Protection Act 1990. The authority must also have regard to any guidance on determining suitability which will be issued from time to time by the Secretary of State, and the authority may consult with other organisations to assist in determining suitability.

- 2.9 Section 3 also allows local authorities, when issuing a licence, to include conditions on it if the licensee or site manager has been convicted of a relevant offence. Subsection (8) specifies the two conditions that can be imposed by local authorities on a licence, namely:
- (a) That the dealer must not receive scrap metal except between 9 a.m. and 5 p.m. on any day;
 - (b) That all scrap metal received must be kept in the form in which it is received for a specified period, not exceeding 72 hours, beginning with the time when it is received.
- 2.10 Section 4 provides the licensing authority with the discretion to revoke a licence on particular grounds, including where the local authority is no longer satisfied that the licensee is a suitable person to carry on the business as a scrap metal dealer. The revocation of a licence can only be carried out by a local authority as the licensing authority.
- 2.11 Section 4 also allows the licensing authority to vary a licence, imposing the conditions stipulated in 2.11 above, if the licensee or a site manager is convicted of a relevant offence.
- 2.12 If the licensing authority proposes to refuse an application for the grant or variation of a licence, or intends to revoke a licence, it must give the applicant or licensee a notice which sets out what the authority proposes to do and the reasons for it. The notice must state that the applicant may make representations against any of these decisions within 14 days.
- 2.13 Section 6 places a duty on the local authority to supply any such information as requested relating to a scrap metal licence to any other local authority in England and Wales, the Environment Agency, the Natural Resources Body for Wales and to police forces.
- 2.14 Section 7 requires that a register of licences issued under the Act should be maintained by the Environment Agency in England and the Natural Resources Body for Wales in Wales. Local authorities will provide the appropriate information on all licences issued in their geographic areas in order that this register can be updated regularly. The register will be made openly accessible to the public and will include: the name of the authority which issued the licence; the name of the licensee; any trading name; the type of licence; the site(s) covered by the licence and the expiry date of the licence.
- 2.15 Section 10 requires that the licensee display a copy of their licence. For site operators this must be in a prominent place in an area accessible to the public. For

mobile collectors, it must be in a manner which enables the licence to be easily read by a person outside the vehicle. A criminal offence is committed by any scrap metal dealer who fails to fulfil these requirements. This offence is punishable on summary conviction with a fine not exceeding level 3 on the standard scale.

- 2.16 Section 11 places a requirement on scrap metal dealers, site managers and employees who have been delegated the responsibility to do so, to verify the identity of the person they are receiving metal from and the person's address. This verification must be done by reference to data, documents or other information obtained from a reliable or independent source, such as the Identity and Passport Service, the Driver and Vehicle Licensing Agency, a bank or utility company etc. The Secretary of State will prescribe in regulations the data or documents which are sufficient, or not sufficient as the case may be, for verifying identity.
- 2.17 It will be an offence not to obtain and verify the seller's identity, punishable by a fine not exceeding level 3 on the standard scale. The offence will apply to the scrap metal dealer, the site manager and any person, who under arrangements made by either the scrap metal dealer or the site manager, has responsibility for fulfilling this requirement on behalf of the business.
- 2.18 Section 13 sets out the record-keeping requirements in respect of any scrap metal received by a scrap metal dealer in the course of their business. Information that is required to be recorded includes the type of metal being purchased; the time/date of the transaction; personal information on the seller; who is acting on behalf of the dealer and proof of the non-cash transaction. Failure to comply with the requirements of this section is an offence attracting a penalty up to level 5 on the standard scale.

3. Implementation timetable

3.1 The Home Office has released the following implementation timetable:

- *A Commencement Order will be made in August.*
- *The main provisions of the Act commence on 1st October including the offence of buying scrap metal for cash.*
- *Dealers and motor salvage operators registered immediately before 1st October will be deemed to have a licence under the Act from 1st October.*
- *Provided the dealer submits an application for a licence on or before 15th October their deemed licence will last until the council either issues them with a licence or gives them notice of the decision to refuse them a licence, although they will be able to continue trading pending an appeal against the decision not to grant a licence.*
- *Where a dealer submits an application on or before 15th October but does not supply all the required information with the application form then the deemed licence remains in effect after 15th October.*
- *Where a dealer with a deemed licence fails to submit an application on or before 15th October the deemed licence will lapse on 16th October.*
- *Other scrap metal dealers, not previously registered, will be able to apply for a licence from 1st October but will have to wait until a licence is granted before they can legally trade.*

- *Local authorities will complete suitability checks on applicants and decide whether to issue licences. We recommend that decisions on whether to grant or refuse a licence to previously registered dealers are made before 1st December.*
- *All other enforcement provisions within the Act commence on 1st December.*

3.2 The Council therefore needs to be in a position to take applications (and to charge a fee for applications) from 1st October 2013.

3.3 As intimated within Paragraph 1.3 the Home Office have still to release the guidance for the setting of fees, and in particular whether or not there will be a re-charge to Councils to cover the Register provisions outlined within Paragraph 2.14. Such a re-charge could be included within any proposed fees a Council may charge.

3.4 It has been necessary therefore to put an estimate on these figures and these have been included with Section 5 to this Report.

4. Proposed delegations

4.1 In respect of Licensing Sub Committees, it is recommended that Chapter 7 of the Constitution – Regulatory and Other Committees (Delegations to Regulatory and Non-Executive Committees) be amended by the addition of the following:

The hearing of representations and the determination of applications for a licence of a Scrap Metal Dealer, under the Scrap Metal Dealers Act 2013, where the Director of Built Environment proposes to refuse or to cancel a licence or to vary a licence under section 4 of the Act and the applicant has given notice to the authority, within the prescribed time, that they require the opportunity to make representations about that proposal.

4.2 In respect of the Director of Built Environment, it is recommended that Chapter 7 of the Constitution – Regulatory and Other Committees (Delegations to Regulatory and Non-Executive Committees) be amended by the addition of the following:

To licence, renew or vary a licence, of a Scrap Metal Dealer under the Scrap Metal Dealers Act 2013.

To serve Notice of his proposal to refuse or cancel a licence of a Scrap Metal Dealer under the Scrap Metal Dealers Act 2013.

To serve Notice of his proposal to vary a licence of a Scrap Metal Dealer under section 4 of the Scrap Metal Dealers Act 2013.

The determination of applications for a licence of a Scrap Metal Dealer, under the Scrap Metal Dealers Act 2013 where it is the intention to refuse or cancel a licence or to vary a licence under section 4 of the Act, where the applicant has not served notice requiring the opportunity to make representations to the authority in respect of the proposal to refuse or cancel a licence, or to impose conditions on a licence.

5. Proposed Licence fees

- 5.1 As per Paragraph 1.5 above the Act provides that an application for a licence must be accompanied by a fee. The fee will be set locally by each local authority on a cost recovery basis, but local authorities will have a duty to have regard to guidance issued by the Secretary of State which will outline the issues that should be considered by them when setting the fee and what activities the fee can cover.
- 5.2 As mentioned elsewhere in this Report this guidance has yet to be issued therefore the LGA guidance has been utilised in order to arrive at a fee which would cover actual cost recovery.
- 5.3 In particular this guidance indicates that in calculating their fees councils will want to take into account the following:
- All the activity required with processing and granting a licence such as considering applications and assessing the suitability of the applicant .
 - The costs of staff associated with supporting the service.
 - Support provided by other parts of the council to the licensing team such as legal services and any recharges there might be for rooms, heating and lighting from the centre of the authority.
 - The cost of providing advice and guidance to applicants on what will be a new process.
 - Carrying out inspections and ensuring compliance with the law.
 - Costs associated with consulting other agencies and bodies when considering if an applicant is a suitable person.
 - Working with any partners in ensuring compliance .
 - Issuing the licence.
 - Any officer time spent providing information for inclusion in the register of dealers.
- 5.4 An important point arising out of the recent Hemming v. Westminster case is that the fees cannot be used to pay for enforcement action against unlicensed dealers (particularly collectors) and these have not been included in Sefton's calculations.
- 5.5 It is therefore proposed that the following fees be charged in respect of this new process:
- | | |
|-------------------|------|
| Grant application | £150 |
| Renewal | £150 |
| Variation | £ 75 |
- 5.6 Should the Home Office guidance be issued prior to the Meeting then the above figures will be re-visited and any changes will be reported to Members on the day.